IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.06.2007

CORAM:

**THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN**

Crl.R.C.No.1624 of 2004

1.Duraraj
2.P.Thirupathi
3.A.Dharmaraju
4.K.Sekhar .. Petitioners/A11 to A14

vs.

State by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Dharmapuri, Respondent/Complainant

Prayer: This Revision petition filed under Section 397 r/w 401 Cr Pc has been preferred against order dated 23.6.2004 made in Crl.M.P.No.422of 2003 in C.C.No.1 of 2003 on the file of the Chief Judicial Magistrate No.I, (Special Judge), Dharmapuri at Krishnagiri.

For Petitioners : Mr.V.Karthik for M/s. T.S. Goplan and Co

For Respondent : Mr.V.R.Balasubramanian
Additional Public Prosecutor

**ORDER**

This revision has been preferred against the order in Crl.M.P.No.422 of 2003 in C.C.No.1 of 2003 on the file of the Chief Judicial Magistrate No.I, Dharmapuri at Krishnagiri. These petitioners have been arrayed as A11 to A14 in C.C.No.1 of 2003 and they have been charged under Section 120(B), 420, 468 and 477 (A) IPC and not under any provision under the Prevention of Corruption Act. Only A1 to A5 have been charged under the provision of Prevention of Corruption Act also apart from the above sections of law under IPC.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2.Admittedly petitioners herein are lorry drivers under A8, the owner of Sri Pachayamman Transport, Chennai. The petitioners filed a petition under Section 239 of Cr.P.C., for the relief of discharge before the trial Court in C.C.No.1 of 2003 against all the charges levelled against them. The learned trial Judge had dismissed the said petition, which necessitated the petitioners to approach this Court by way of this revision.

3.The only point to be decided in this revision is whether there is any prima facie material produced by the prosecution to proceed against these petitioners who are arrayed as A11 to A14 in C.C.No.1 of 2003?

4.The learned trial Judge has observed in his order that the prosecution has relied mainly on the statement of witnesses recorded under Section 161(3) of Cr.P.C and as per the statement of witness No.3 Thiru.Chandrasekaran, Superintendent, Office of the Divisional Engineer, National Highways, Dharmapuri, the bulk quantity of bitumen was transported through lorry belonging to Sri Pachaiyamman Transoport, owned by A8 from Indian oil Corporation and petroleum Corporation Limitted, Manali Chennai to Krishnagiri, Hosur and Shoolagiri Sections of National Highways Department for the road repair work and that these petitioners have transported in lorry Number TCY.8929, TN.07-A-9199, TN.04-D-3133 and TN.01-D-0999 to the above destination from Indian Oil Corporation and Petroleum Corporation Limited, Manali, Chennai. The learned Trial Judge has dismissed the application on the ground that as the drivers of the said lorry they failed to weigh the load of bitumen at the delivery point and they have not obtained any acknowledgment for the quantity of bitumen delivered.

5.The prosecution relied on the statement of Selvi.R.Nambiar, Assistant Commandant, Central Industrial Security Force, Manali, Chennai. But a perusal of the above said statement will go to show that there is nothing adverse to the interest was said by the above said witness against these lorry drivers. She would say that bitumen were transported through lorries bearing registration numbers TCY 8929, TNO-7A9199, TNO 7A0199, TNO 4 D 3133 and TNO 1 D 0999, on various dates from the month of April-1998 to May-1998. Her statement is bereft of particulars regarding the quantity of bitumen transported through these vehicles at the point of loading and the quantity of bitumen delivered at the point of delivery.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6.The prosecution would rely on the statement of Thiru.C.Murugan, Godown Watchman, Highways and H & RW TB Compound, Krishnagiri and the statement of Mr.V.Venkoba rao, another Godown wathman National Highways bitumen godown H & Rw TB Compound. Thiru.C.Murugan, Godown Watchman, in his statement would categorically state that there is no register is being maintained at their godown and those particulars will be noted down by the Assistant Engineer in his private note book. But he would say that during April-1998 through lorry bearing Registration No.TN 09F 0927, 10.230 metric tones of bitumen was received in the said godown at Krishnagiri and on 4.4.1998 through lorry bearing Registration No.TMJ 2605, 11.027 metric tones of tar has been received at the Krishnagiri godown and would say that no tar was received during April-1998 at their godown at Krishnagiri to be delivered to Shoolagiri National Highways branch. But apart from this he has not specifically stated anything about these accused (A11 to A14). Further the lorry numbers mentioned in his statement are not relating to the lorry driven by these accused at the relevant point of time in transporting bitumen to Shoolgiri. The statement of Mr. V.Venkoba rao would reveal that there is no specific register maintained at the godown for the receipt of the bitumen and those particulars will be noted only by the Assistant Engineer in his private notebook. It is admitted by the learned Additional Public Prosecutor that the said private notebook said to have been maintained by the Assistant Engineer at Krishnagiri godown was not produced by the prosecution.

7. Under such circumstances, I am of the view that there is no prima facie material on record to show that these accused have comitted the offence under Section 120(B), 420, 468 and 477(A) IPC. The reasoning given by the learned Chief Judicial Magistrate No.I, (special Judge), Dharmapuri at Krishnagiri, for dismissing the petition filed by these petitioners under Section 239 of cr.P.C, in my view, is not sustainable. Under such circumstances, the revision is allowed and the order passed by the learned Chief Judicial Magistrate No.I, (Special Judge), Dharmapuri at Krishnagiri, in Crl.M.P.No.422 of 2003 in C.C.No.1 of 2003 is set aside and A11 to A14 are ordered to be discharged

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

from the charges levelled against them. The learned trial judge is directed to dispose of C.C.No.1 of 2003 pending on this file, within three months from the date of receipt of copy of this order against the other accused.
ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,
1.The Chief Judicial Magistrate No.I,
(Special Judge), Dharmapuri
at Krishnagiri.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Dharmapuri.

3.The Public Prosecutor, High Court,
Madras.

+ one cc to M/s. T. S. Gopalan and Co sr no. 33963

NSM(CO)
NM(18.06.07)

Crl.R.C.No.1624 of 2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/